

**STATEMENT OF
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**Before the
Subcommittee on Forests and Forest Health
Committee on Resources
U.S. House of Representatives**

Concerning Chairman's Draft Legislation on Alternative NEPA Arrangements

March 23, 1999

MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to discuss your draft legislation for alternative arrangements for environmental analysis and National Environmental Policy Act (NEPA) compliance in emergency situations in the National Forest System. I am Sandra Key, Associate Deputy Chief for Programs and Legislation. I am accompanied today by Chris Holmes, the Forest Service's liaison with the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) and Ronnie Raum, Forest Supervisor of the National Forests in Texas.

The Forest Service testified last year on a similar piece of legislation, H R. 4345, at a hearing before this Subcommittee on July 28, 1998. I preface my remarks by saying the Administration has not had sufficient time to analyze fully the most recent draft of your proposed legislation, thus my testimony reflects our initial reaction. While we notice some changes to the proposal submitted last year, we still

feel existing authority is appropriate and adequate to administer our nation's 192 million acres of national forests and grasslands.

Background

The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals, and provides the means for implementing the policy. The regulations issued by the Council on Environmental Quality (CEQ) in 1978 that implement NEPA provide for alternative arrangements to the normal NEPA procedure in emergencies:

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. (40 C.F.R. 1506.11)

The Forest Service NEPA procedures supplement this guidance by instructing forests to consult with the Washington Office on emergencies, other than fire, that may require consultation with CEQ about an alternative arrangement.

Examples of Emergencies

The Forest Service and CEQ have used the emergency provision in the CEQ regulations on only three occasions since 1978.

Due to severe drought in the summer of 1992, the City of Portland, Oregon requested permission from the Mt. Hood National Forest to pump 1.7 billion gallons of water from Bull Run Lake to meet the emergency needs of the city for domestic water supplies. While the Forest Service believed that

such action would increase sediments within the drinking water supply and kill fish and alter significantly the ecology of the lake, it also understood the emergency situation that Portland was facing.

CEQ concurred with the Forest Service that an emergency situation existed, and agreed that the Forest Service could drawdown the lake prior to NEPA documentation. In this case, the alternative to normal NEPA procedures permitted the Forest Service to prepare an Environmental Assessment (EA) after the emergency action was taken.

The city pumped approximately 500 million gallons from Bull Run Lake between September 12, and September 28, 1992. Much needed rain fell during late September through early October, ending the need for further emergency withdrawals as by mid-October the lake returned to pre-emergency levels.

In 1996, the Forest Service and Bureau of Land Management (BLM) found it necessary to take immediate action in the Cascade Resource Area and the Boise National Forest in Idaho. These areas included multiple watersheds adjacent to the City of Boise. Over fifteen thousand acres of federal, state, and private lands were burned in the human-caused Eighth Street Fire which started on August 26, 1996. After the fire was extinguished, immediate rehabilitation was needed to minimize the threats to human life and property, deterioration of water quality, and loss of soil productivity that could have resulted from flooding, mud slides, and debris torrents from the burned area. The area was critical because of its location in a key watershed, that functions as the primary ground water recharge area for the Boise Front aquifer, the source of groundwater wells for the City of Boise and

other municipalities. In addition, increased runoff potential threatened buildings and homes immediately below the burned area.

Several urgent circumstances called for applying the emergency NEPA provisions to the Eighth Street Fire. First, recent events showed the potential for damage. A moderate rainstorm following fires in the same general area in the 1950's caused flooding of a large portion of Boise, including the downtown corridor. Second, local and state governments were consulted and supported the proposed actions. Third, the project received extensive public review and support. Fourth, as would have been required under NEPA, the Forest Service discussed alternative treatments and reviewed their effects on wilderness and threatened or endangered species.

Last year, the Forest Service again requested alternative arrangements with CEQ for emergency actions to restore immediately portions of approximately 103,000 acres of forested lands on the National Forests and Grasslands in Texas damaged by the February 10, 1998, windstorm. The agency believed it would have taken up to six months using normal NEPA procedures before it could start restoring the damaged ecosystem, that including critical habitat for red-cockaded woodpecker and bald eagle. Such a delay could have resulted in further habitat loss for these threatened and endangered species from fires and bark beetle attack reversing the success rates with the red-cockaded woodpecker and bald eagle nesting habitat. We were also concerned that the delay would cause undue risk to adjacent private property from potential fire and insect damage.

Bark beetle risk reduction was one of the reasons for requesting alternative arrangements initially. As the entire incident unfolded and we did additional effects analysis, we found that the science did not

support the notion that blowdown material would increase the risk of bark beetle attack. The two most prominent reasons for our alternative arrangements rested on avoiding further damage to an endangered species (the red-cockaded woodpecker) and fuel loading reduction to avoid catastrophic fires.

Where emergency circumstances make it necessary to take action without observing the provisions of the NEPA regulations, the federal agency consults with CEQ about alternative arrangements. Often, actions proposed to be taken in emergency situations do not rise to the environmental significance level, and therefore, do not require alternative arrangements. For these situations, the Forest Service follows its normal NEPA procedures.

Generally, there are four components that proposals must have before an alternative arrangement is considered an emergency. First, without taking the proposed action, there must be immediate threats to life and property or both, or possible violation of law, such as the Endangered Species Act (ESA). Second, the public must be provided an opportunity to comment on the project. Third, the agency must still document the environmental analysis that goes into the decision. Fourth, there are provisions for monitoring and adjustments as we proceed with the project, including an evaluation of the project once it is completed.

In each of the three cases I described, a catastrophe had created an emergency situation requiring immediate and significant action. Each case clearly demonstrated interagency coordination and agreement regarding the urgency for immediate action and clear disclosure to the public of that need. There was also strong support from involved State and Federal agencies for the proposed activities.

Numerous catastrophic events occur each year affecting the National Forest System. Rarely, however, do these events constitute an emergency that justifies altering our normal NEPA review processes. The fact that only three referrals for alternative arrangements have been made by the Forest Service to CEQ since 1978 is evidence that such referrals are only done in unusual circumstances.

Discussion of Legislation

While the Forest Service recognizes the catastrophic nature of some of the events described in the bill, they do not rise to the level of emergency status. NEPA has been valuable in integrating environmental considerations into agency planning for the past 30 years. The Forest Service has only used the alternative arrangements three times in the last 20 years, demonstrating that this provision is not necessary for the vast majority of projects.

In conclusion, we believe that the procedure we use for requesting alternative arrangements to NEPA compliance for emergencies works. The existing authority is appropriate and adequate to administer our national forest and grasslands.

We appreciate the Committee's interest in the alternative arrangements provision of NEPA, and we understand the Committee's desire to use this extraordinary process more broadly. However, we believe the current process is working well. I welcome any questions the Subcommittee may have.

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